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ABSTRACT

The Virginia regulations for special education have been designed to comply with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Virginians with Disabilities Act. Part 1 presents definitions of 80 terms. Part 2 considers responsibilities and functions of the State Department of Education. Part 3 addresses the responsibilities of local education agencies (LEAs) and state agencies in five broad areas: (1) identification, evaluation, and eligibility; (2) service delivery (including free appropriate public education, Individualized Education Programs, and educational interpreting services); (3) procedural safeguards (due process, confidentiality, and complaint procedures); (4) requirements for establishing surrogate parent procedures; and (5) administration and governance. Part 4 considers funding, including: reimbursement to LEAs and state-operated programs; state funds; federal funds; funds to assist with the education of children with disabilities residing in state-operated facilities; withholding and recovery of funds; and appeal of administrative decisions. Part 5 specifies additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody. Part 6 briefly addresses compliance with Section 504 of the Rehabilitation Act of 1973, as amended. (DB)

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ED 395 413

# REGULATIONS GOVERNING

# SPECIAL EDUCATION PROGRAMS

## for Children with Disabilities in Virginia

Effective January 1994

EC304804

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Virginia Department of Education

Regulations Governing

# SPECIAL EDUCATION PROGRAMS

for Children with Disabilities in Virginia

Effective January 1994

Virginia Department of Education
Division of Compliance Coordination
P. O. Box 2120
Richmond, Virginia 23216-2120

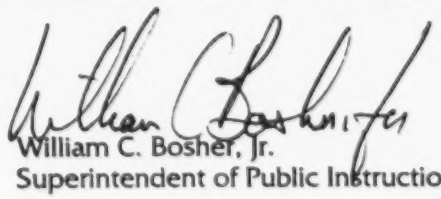
# Foreword

The need to revise Virginia's special education regulations has been identified throughout the education community. These regulations are presented both in response to that need and as part of the Board of Education's continuing efforts to improve the quality of education for children with disabilities in the Commonwealth.

The project team that was responsible for developing these regulations recognized the importance of school divisions participating in the project. By soliciting input from school division personnel, the team sought to foster a cooperative spirit in order to produce maximum benefit to students in Virginia in need of special education services.

With the hope of identifying unmet special education needs, the team also sought input from parents, parent organizations, and the State Special Education Advisory Committee. Much of that input was especially helpful in highlighting language in the regulations that needed clarification to make them easier to understand.

The department is grateful to those who served on the team that prepared these regulations and to those who spoke at public hearings and provided written comments during the revision process. Copies of these regulations, including braille copies, audio tapes and large print versions are available at no cost from the Virginia Department of Education. Please forward your request to the Division of Compliance Coordination, P.O. Box 2120, Richmond, Virginia 23216-2120 or telephone 1-800-422-2083 (Voice) 1-800-422-1098 (TDD).



William C. Bosher, Jr.
Superintendent of Public Instruction

# Table of Contents


**Preamble** ..... 1

**Part I** **Definitions** ..... 2

**Part II** **Responsibilities of the State Department of Education** ..... 13

**§2.1** **Right to a Free Appropriate Public Education** ..... 13

**§2.2** **Functions of the State Department of Education** ..... 13

**Part III** **Responsibilities of LEAs and State Agencies** ..... 15

**§3.1** **Applicability of Requirements** ..... 15

**§3.2** **Identification, Evaluation, and Eligibility** ..... 15
- A. Target Ages and Eligibility ..... 15
- B. Child Find ..... 15
- C. Screening ..... 16
- D. Referral ..... 17
- E. Evaluation ..... 17
- F. Eligibility ..... 19
- G. Termination of Service(s) ..... 20
- H. Child's Status Pending Determination of Eligibility ..... 20
- I. Child's Status - Previous Enrollment in Special Education ..... 21

**§3.3** **Service Delivery** ..... 21
- A. Free Appropriate Public Education ..... 21
  - 1. Age of Eligibility ..... 21
  - 2. Continuum of Alternative Placements ..... 21
  - 3. Least Restrictive Environment (LRE) ..... 22
  - 4. Safeguards in Evaluation, Eligibility and Placement ..... 22
  - 5. Transportation ..... 23
  - 6. Reevaluation ..... 23
  - 7. Non-Academic and Extracurricular Services and Activities ..... 23
  - 8. Physical Education ..... 23
- B. Individualized Education Program ..... 24
  - 1. Responsibility ..... 24
  - 2. Accountability ..... 24
  - 3. Participants in Meeting ..... 24
  - 4. Parent Participation ..... 25
  - 5. Content of the Individualized Education Program ..... 26
  - 6. Agency Responsibilities for Transition Services ..... 27
  - 7. Placements ..... 27
  - 8. Private School Placement ..... 27
  - 9. Children with Disabilities in Private Schools Not Placed or Referred by Public Agencies ..... 28
  - 10. Children with Disabilities on Homebound Instruction ..... 28
  - 11. Suspension or Expulsion of Children with Disabilities ..... 29
  - 12. Assistive Technology ..... 30
- C. Educational Interpreting Services ..... 30

**§3.4 Procedural Safeguards ..... 30**
A. Due Process ..... 30
1. Procedural Safeguards ..... 30
2. Impartial Due Process Hearing ..... 32
3. Child's Status During Proceedings ..... 32
4. Mediation ..... 33
5. Commencement of the Due Process Hearing ..... 33
6. Qualifications, Removal, Substitution and Challenge of Hearing Officers ..... 33
7. Responsibilities of LEA - Pre-Hearing ..... 33
8. Responsibilities of the Hearing Officer -Pre-Hearing ..... 34
9. Rights of Parties to the Hearing ..... 34
10. Due Process Hearing Procedure ..... 35
11. Administrative Appeal and Impartial Review ..... 36
12. Attorney's Fees ..... 36
13. Timelines for Hearings and Reviews ..... 37
14. Costs of Due Process Hearings and State Review ..... 37
15. Implementation Plan ..... 37
16. Due Process File ..... 38
B. Confidentiality of Information ..... 38
C. Complaint Procedure ..... 38

**§3.5 Requirements for Establishing Surrogate Parent Procedures for LEAs and Applicable State Agencies and Institutions ..... 39**
A. Role of Surrogate Parent ..... 39
B. Appointment of Surrogate Parents ..... 40
C. Identification and Recruitment of Surrogate Parents ..... 41
D. Qualifications of Surrogate Parents ..... 41
E. Rights of Surrogate Parents ..... 42

**§3.6 Administration and Governance ..... 42**
A. Plans, Applications and Reports ..... 42
B. Personnel Development ..... 43
C. Local Advisory Committee ..... 43
D. Regional Programs ..... 44

**Part IV Funding ..... 45**

**§4.1 Reimbursement to LEAs and State-Operated Programs ..... 45**

**§4.2 State Funds ..... 45**
A. Children with Disabilities Enrolled in Programs Operated by a Local School Board ..... 45
1. Day School Programs ..... 45
2. Homebound Instruction ..... 45
3. Transportation ..... 45
B. Children with Disabilities Enrolled in Regional Special Education Programs ..... 45
C. Funds under the Comprehensive Services Act for At Risk Youth and Families ..... 46
D. Reimbursement for Children with Disabilities Placed in Foster Care ..... 46

**§4.3 Federal Funds ..... 46**

**§4.4 Funds to Assist with the Education of Children with Disabilities Residing in State Operated Facilities ..... 47**
A. Children in State Mental Health Facilities ..... 47
B. Children in State Training Centers for the Mentally Retarded ..... 47

C. Children in Specialized Children's Hospitals ..... 47
D. Children in Woodrow Wilson Rehabilitation Center ..... 47
E. Children in Regional Juvenile Detention Homes ..... 47
F. State-Operated Diagnostic Clinics ..... 47
G. Virginia Department of Correctional Education ..... 47

**§4.5 Funding, Withholding, and Recovery of Funds ..... 48**

**§4.6 Appeal of Administrative Decision ..... 48**

**Part V Additional Responsibilities of State Boards, Agencies, and Institutions for Education and Training of Children with Disabilities in Residence or Custody ..... 50**

**§5.1 Provision of Special Education to Children with Disabilities in Residence or Custody ..... 50**

**§5.2 Annual Plan ..... 50**

**§5.3 Staff and Facility ..... 51**

**Part VI Compliance with §504 of the Rehabilitation Act of 1973, as Amended ..... 53**

**Index ..... 55**

# Preamble

Article VIII, Section 1, of the Virginia Constitution delineates the General Assembly's responsibility for education as follows: "...shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth..." Chapter 13, Article 2, Section 22.1-214 of the Code of Virginia states: "The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train handicapped children..." Section 22.1-7 of the Code of Virginia addresses the educational responsibility for children in residence or in custody of State agencies, "Each State board, agency, and institution having children in residence or in custody shall provide education and training to such children which is at least comparable to that which would be provided to such children in the public school system." Further, the Code of Virginia provides that all handicapped persons from ages two to twenty-one, inclusive, (hereinafter referred to as children with disabilities) residing in the Commonwealth of Virginia are identified, evaluated and have available a free and appropriate public education. The provisions set forth in these regulations apply to all public and private schools and agencies in the Commonwealth which provide special education and related services to children with disabilities.

The statutory authority for these regulations is delineated in Article VIII, Section 1 of the Constitution of Virginia, Title 22.1 of the Code of Virginia and the Individuals with Disabilities Education Act (20 U.S.C. §§1400-1485). All regulations promulgated by the Board of Education are applicable to students with disabilities except where noted.

In addition to the requirements of the Individuals with Disabilities Education Act and these regulations, local school divisions must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act, and the Virginians with Disabilities Act.

# PART I
## Definitions

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

**"Age of eligibility"** means all eligible children with disabilities who have not graduated from a secondary school or completed a program approved by the Board of Education and who are identified as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, a visual impairment which may include blindness, or who have other disabilities as defined by the Board of Education; who, because of such impairments, are in need of special education, whose second birthday falls on or before September 30, and who have not reached their twenty-second birthday on or before September 30.

**"Assistive technology device"** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

**"Assistive technology service"** means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family;
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life function of children with disabilities.

**"Audiology"** means services provided by a qualified audiologist and includes:

1. Identification of children with hearing loss;
2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of pupils, parents and teachers regarding hearing loss;

6. Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.

**"Autism"** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

**"Change in identification"** means a change in the Eligibility Committee's determination of the child's disability.

**"Change in placement"** means:

1. The change in a child's academic offerings from general to special education and from special education to general education;
2. The expulsion or long-term suspension of a student with a disability;
3. The placement change which results from a change in the identification of a disability;
4. The change from a public school to a private day, residential or state operated program; from a private day, residential or state operated program to a public school; or to a placement in a separate facility for educational purposes;
5. Graduation.

**"Change in placement procedures"** means:

1. Written notice to the parent;
2. IEP committee meeting;
3. Parent consent to change the placement.

**"Child"** means any person who shall not have reached his twenty-second birthday by September 30 of the current year.

**"Children with disabilities"** means those children evaluated, in accordance with these regulations, as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include blindness, who, because of these impairments, need special education and related services.

**"Comprehensive programs and services"** means educational programs and support services which are required to provide a free appropriate educational program in the least restrictive environment to every child with a disability ages 2 to 21, inclusive, in each local school division or other public agencies responsible for providing educational services to children with disabilities.

**"Consent"** means:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought in his native language, or other mode of communication;
2. The parent understands and agrees, in writing, to the carrying out of the activity for which consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and,
3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked any time prior to the time limits set forth in Section 3.4.

**"Counseling services"** means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

**"Current evaluation"** means one that has been completed within 365 calendar days or less.

**"Days"** are specified as either "calendar days" or "administrative working days". "Administrative working days" means days exclusive of Saturdays, Sundays, and officially designated holidays for all local school division personnel. "Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this procedure shall be extended to the next day, not a Saturday, Sunday, or school holiday.

**"Deafness"** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects educational performance.

**"Deaf blindness"** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

**"Developmental delay"** means a significant delay in one or more of the following areas of development for a child below age 8:

1. Cognitive ability
2. Motor skills
3. Social/adaptive behavior
4. Perceptual skills
5. Communication skills

**"Direct services"** means services provided to a child with a disability by the state directly, by contract, or through other arrangements.

**"Early identification"** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

**"Emotional disturbance"**: see "Serious emotional disturbance".

**"Evaluation"** means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade, or class.

**"Federal financial assistance"** means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property.

**"Free appropriate public education"** (FAPE) means special education and related services which:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Board of Education;
3. Include preschool, elementary school, middle school, or secondary school, and/or vocational education; and
4. Are provided in conformity with an individualized education program. FAPE is a statutory

term which requires special education and related services to be provided in accordance with an individualized education program (IEP).

**"Hearing impairment"** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but which is not included under the definition of "deafness" in this section.

**"Impartial hearing officer"** means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted:

1. By a person employed by a public agency involved with the care or education of the child; or
2. By a person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

A hearing officer is not an employee of the Local Education Agency (LEA) or State Education Agency (SEA) solely because he or she is paid by the agency to serve as a hearing officer.

**"Implementation plan"** means the plan developed by the LEA designed to operationalize the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan shall include the name and position of the individual in the local school division charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

**"Independent educational evaluation"** (IEE) means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question. Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiner(s), must be the same as the criteria the public agency uses when it initiates an evaluation.

**"Individualized education program"** (IEP) means a written statement for each child with a disability developed in any meeting by a representative of the LEA who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents of such child, and whenever appropriate, such child. An IEP shall include:

1. A statement of the present levels of educational performance;
   a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and non-academic areas.
   b. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.
   c. There should be a direct relationship between the present level of performance and the other components of the IEP.
2. A statement of annual goals, including short-term instructional objectives;
3. A statement of the specific education and related services to be provided, and the extent to which such child will be able to participate in regular educational programs;
4. The projected date for initiation and anticipated duration of the services month, day, and year;
5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved;
6. Necessary information regarding the Literacy Testing Program (LTP) (see §3.3B5f);

7. A statement of the needed transition services for each student beginning no later than age 16 (and at a younger age, if determined appropriate) including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. The transition services must address each of the following areas:

   a. The development of employment and other post-school adult living objectives;

   b. Instruction;

   c. Community experiences;

   d. If appropriate, acquisition of daily living skills and functional vocational evaluation; unless the IEP Committee determines that services are not needed in one or more of those areas. The IEP Committee must then include in the IEP a statement to that effect and the basis for that determination in the IEP;

8. A statement as to whether or not the student will participate in Family Life Education.

**"Initial placement"** means the first public agency placement in either a public school, state operated program, or private school program providing special education and/or related services.

**"In-service training"** means training other than that received by an individual in a full-time program which leads to a degree.

**"Interpreting personnel"** means personnel providing educational interpreting services for children with hearing impairments and/or deafness meeting qualifications set forth under the section on Qualified Professionals.

**"Learning disability"**: see "Specific learning disability".

**"Least Restrictive Environment"** (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**"Local Educational Agency"** (LEA) means the local school division or other public agencies responsible for providing educational services to children with disabilities.

**"Medical services"** means services provided by a licensed physician to determine a child's medically related disability which results in the child's need for special education and related services.

**"Mental retardation"** means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

**"Multiple disabilities"** means concomitant impairments (such as mental retardation - blindness, mental retardation - orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include children with deaf-blindness.

**"Native language"** as defined by section 703(a)(2) of the Bilingual Education Act, when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

1. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

2. If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, Braille, or oral communication).

**"Non-academic services and extracurricular services"** may include: counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

**"Notification"** means written statements in English and in the primary language of the parent's home; and oral communication in the primary language of the parent's home.

**"Occupational therapy"** means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes:

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

2. Improving ability to perform tasks for independent functioning when functions are impaired or lost; and,

3. Preventing, through early intervention, initial or further impairment or loss of function.

**"Orthopedic impairment"** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture).

**"Other health impairment"** means having limited strength, vitality or alertness due to health problems such as a heart condition, tuberculosis, rheumatic fever, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder/attention deficit hyperactivity disorder, or diabetes that are chronic or acute and that adversely affect a child's educational performance.

**"Parent"** means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed pursuant to §3.5. The term does not include the state if the child is a ward of the state. The term means either parent, unless the LEA has been provided with evidence that there is a legally binding instrument or a state law or court order to the contrary. The term also includes persons acting in the place of a parent such as a grandparent or stepparent with whom the child lives. A child 18 years or older may assert any rights under these regulations in his own name.

**"Parent counseling and training"** means assisting parents in understanding the special needs of their child and providing parents with information about child development.

**"Participating agency"** means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained.

**"Physical education"** means as follows:

1. The development of:

   a. Physical and motor fitness;

   b. Fundamental motor skills and patterns; and,

   c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

2. The term includes special physical education, adaptive physical education, movement education, and motor development.

**"Physical therapy"** means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction.

**"Program"** means the special education and related services as determined by a child's individualized educational program.

**"Psychological services"** includes those services provided by a qualified psychologist or services provided under the direction or supervision of a qualified psychologist:

1. Administering psychological and educational tests and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
5. Planning and managing a program of psychological services, including psychological counseling for children and parents.

**"Public agency"** means the state educational agency (SEA), local educational agencies, intermediate educational units, and any other public agencies that are responsible for providing education to children with disabilities.

**"Public expense"** means that the LEA either pays for the full cost of the service or evaluation or ensures that the service and/or evaluation is otherwise provided at no cost to the parent.

**"Public notice"** means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcement, handbills, brochures, and other methods which are likely to succeed in providing information to the public.

**"Qualified"** means that a person has met the State Board educational agency approved or recognized certification, licensing, registration or other comparable requirements which apply to the area in which he or she is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service, and/or Virginia Licensure requirements as designated by State Law.

**"Recipient"** means any state or other political subdivision, any public or private agency, institution, organization, or other entity, or any person to which public financial assistance is extended directly or through another recipient.

**"Recreation"** includes:

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation program in schools and community agencies; and
4. Leisure education.

**"Reevaluation"** means completion of a new evaluation.

**"Rehabilitation counseling services"** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

**"Related services"** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

Senate Report No. 94-168 provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of disabilities and the provision of services to minimize the effects of such conditions. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

**"School health services"** means services provided by a qualified school nurse or other qualified person.

**"Screening"** means those processes which are used routinely with all children to help determine educational strengths and weaknesses.

**"Section 504"** means that section of the Rehabilitation Act of 1973 which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance.

**"Serious emotional disturbance"** means as follows:

1. A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a child's educational performance:
   a. An inability to learn which cannot be explained by intellectual, sensory, or health factors;
   b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
   c Inappropriate types of behavior or feelings under normal circumstances;
   d. A general pervasive mood of unhappiness or depression; or
   e. A tendency to develop physical symptoms or fears associated with personal or school problems.
2. The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed.

**"Severe and profound disability"** means individuals who:

1. Have primary disabilities that severely impair cognitive abilities, adaptive skills, and life functioning;
2. May have associated severe behavior problems;
3. May have the high probability of additional physical and/or sensory disabilities; and
4. Do require significantly more educational resources than are provided for children with mild and moderate disabilities in special education programs.

**"Social work services in schools"** includes those services provided by a qualified visiting teacher or social worker:

1. Preparing a social or developmental history on a child with a disability;
2. Group and individual counseling with the child and family;
3. Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
4. Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

**"Special education"** means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals, and institutions and in other settings and instruction in physical education.

1. The term includes speech-language pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered "special education" rather than a "related service" under state standards.
2. The term also includes vocational education if it consists of specially designed instruction at no cost to the parent, to meet the unique needs of a child with a disability.
3. The terms in this definition are defined as follows:
   a. "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nondisabled students or their parents as a part of the regular education program.
   b. "Physical education" means
      (1) The development of:
         (a) Physical and motor fitness;
         (b) Fundamental motor skills and patterns; and
         (c) Skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports).
      (2) The term includes special physical education, adaptive physical education, movement education, and motor development.
   c. "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.
4. The definition of Special Education is a particularly important one. While a child may be considered to have a disability under other laws, he does not have a disability under these regulations unless he needs special education. If a child does not need special education, there can be no related services since the provision of a related service must be necessary for a child to benefit from special education.

**"Specific learning disability"** means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning

problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

**"Speech or language impairment"** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

**"Speech/language pathology"** includes:

1. Identification of children with speech or language disorders;
2. Diagnosis and appraisal of specific speech or language disorders;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;
4. Provisions of speech and language services for the habilitation or prevention of communicative disorders; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

**"State educational agency"** (SEA) means the Virginia Department of Education.

**"Support services"** means implementing the comprehensive system of personnel development; recruitment and training of hearing officers in conjunction with the Supreme Court of Virginia; and recruitment and training of surrogate parents; and public information and parent-training activities relating to a free appropriate public education for children with disabilities.

**"Surrogate parent"** means a person appointed in accordance with procedures set forth to provide children who are in legal or physical custody of the state, or whose parents are not known or are unavailable, with the protection of procedural safeguards.

**"Testing"** means individual evaluation procedures (formal testing and assessment) to determine initial or continued eligibility for special education services.

**"Transition services"** means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities described must:

1. Be based on the individual student's needs, taking into account the student's preferences and interests; and
2. Include:
   a. The development of employment and other post-school adult living objectives;
   b. Instruction;
   c. Community experiences; and
   d. If appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education if they are provided as specially designed instruction, or related services if they are required to assist a student with a disability to benefit from special education. The list of activities above is not intended to be exhaustive.

**"Transportation"** includes:

1. Travel to and from school and between schools;
2. Travel in and around school building; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

**"Traumatic brain injury"** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

**"Visual impairment"** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

**"Vocational education"** means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

**"Ward of the State"** means all parental rights and responsibilities for the care and custody of a child have been terminated by court order or applicable law, and the child has been placed in the care and custody of the State.

# PART II

## Responsibilities of the State Department of Education

### §2.1 Right to a Free Appropriate Public Education

The Virginia Department of Education shall ensure that all persons with disabilities from two to 21, inclusive, residing in the Commonwealth of Virginia are identified, evaluated, and have available a free and appropriate public education. The provisions set forth in these regulations shall apply to all public and private schools and agencies in the Commonwealth which provide special education and related services to children with disabilities.

### §2.2 Functions of the State Department of Education

In keeping with its responsibilities in this regard, the Department of Education (SEA) shall perform the functions which follow:

A. Review and submit to the Board of Education for approval the Annual Special Education Plan/Report and Funding Applications from each local school division or other public agencies responsible for providing educational services to children with disabilities.

B. Prepare and submit for public hearing, for comment from members of the State Special Education Advisory Committee, and for approval by the U.S. Department of Education, the State Plan for the Education of Children with Disabilities. Such Plan shall contain assurances of and procedures as prescribed by federal law.

C. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities.

D. Assist LEAs and other participating state agencies in the implementation of state and federal laws and regulations pertaining to the education of children with disabilities by providing technical assistance and consultative services.

E. Review and evaluate compliance of LEAs with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed.

F. Review and evaluate compliance of approved private nonsectarian schools for children with disabilities with state and federal laws and regulations pertaining to the education of children with disabilities.

G. Establish and maintain a state advisory committee composed of persons involved in or concerned with the education of children with disabilities. The membership must include, but need not be limited to, at least one representative from each of the groups as follows:

1. Individuals with disabilities;
2. Teachers of children with disabilities;
3. Parents of children with disabilities;
4. State and local education officials;
5. Special education program administrators;

6. Public and private institutions of higher education; and

7. Advocacy groups.

H. Provide at least annually to the State Special Education Advisory Committee all findings and decisions of due process hearings, with all personally identifiable information deleted, and in addition, a summary of the complaint findings.

I. Develop and implement a comprehensive personnel development plan which focuses on pre- and in-service educational needs.

J. Develop procedures for disseminating significant information derived from research, demonstration programs and projects involving children with disabilities.

K. Secure agreements from state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of educational and related services to all children with disabilities.

L. Disburse the appropriated funds for the education of children with disabilities in the Commonwealth to LEAs and state operated programs which are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities.

M. Establish procedures to ensure that the placements of children with disabilities by other public agencies are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities.

N. Establish reasonable tuition costs and other reasonable charges for each approved private nonsectarian school for children with disabilities based on the special education and services provided. Charges for other services, in addition to room and board, will be established in cooperation with other state agencies having similar responsibilities. All such cost and charges shall be established in accordance with the process determined by the Interdepartmental Committee on Rate Setting for Children's Facilities.

O. Report and certify annually to the appropriate federal agency the number of children with disabilities in local school divisions and state operated programs receiving special education and related services on December 1.

P. Prepare an annual report which summarizes special education and related services provided children with disabilities.

Q. Review, investigate, and act on any allegations of substance which may be made by public or private agencies, individuals, or organizations of actions taken by any public agency that are contrary to the requirements of laws and regulations affecting the education of children with disabilities.

R. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures.

S. Provide private schools with copies of all state regulations and standards relating to the education of children with disabilities and revisions of these regulations and standards as they occur.

T. Afford private schools to which a public agency has referred or placed a child with a disability the opportunity to participate in the development and revision of regulations and standards which apply to them.

# PART III

## Responsibilities of LEAS and State Agencies

### §3.1 Applicability of Requirements

The requirements set forth in this part are applicable to local school divisions and state agencies providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

### §3.2 Identification, Evaluation, and Eligibility

A. Target Ages and Eligibility

Each Annual Special Education Plan/Report and Funding Application shall include procedures which ensure that all children residing within the jurisdiction of an LEA, birth to age 21, inclusive, who may have disabilities, and who may need special education and related services are identified, located, and evaluated. The plan also shall include a practical method for determining children who are receiving needed special education and related services and those who are not receiving such services.

B. Child Find

1. Each local school division shall, at least annually, conduct a public awareness campaign to:

   a. Inform the community of a person's statutory right to a free appropriate education and the availability of special education programs and services;

   b. Generate referrals; and

   c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for early intervention.

2. Procedures for informing the community shall show evidence of the use of a variety of materials and media, and shall:

   a. Provide for personal contacts with community groups, public and private agencies and organizations; and

   b. Provide information in the person's native language or primary mode of communication.

3. There shall be evidence of involvement of parents and community members in the required child find and community awareness campaign.

4. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children from birth to 21, inclusive, who are in need of special education and related services. Written procedures shall be established for collecting, reviewing and maintaining such data.

5. All children ages two to 21, inclusive, not enrolled in school and who are suspected of having a disability shall be referred to the division superintendent, or designee, who shall initiate the process of determining eligibility for special education services.

6. Where such children are determined to be eligible for special education services, school divisions are required to offer appropriate programs and placements consistent with each child's IEP from ages two to 21 inclusive.

C. Screening

1. Each local school division shall establish and maintain screening procedures to assure the identification of children with disabilities residing within its jurisdiction and requiring special education. All procedural safeguards shall be maintained during the screening process. These include the following:

   a. Written notice when appropriate;

   b. Confidentiality; and

   c. Maintenance of student's scholastic record.

2. The screening process for all children enrolled in the school division is as follows:

   a. All children, within 60 administrative working days of initial enrollment in a public school, shall be screened in the following areas to determine if formal assessment is indicated:

      (1) Speech, voice, and language; and

      (2) Vision and hearing.

   b. All children (through grade three), within 60 administrative working days of initial enrollment in public schools, shall be screened for fine and gross motor functions to determine if formal assessment is indicated.

   c. Specific measures or instruments will be employed which use:

      (1) Both observational and performance techniques; and

      (2) Techniques which guarantee non-discrimination.

3. There shall be established a formal child study committee in each school to review records and other performance evidence of those children referred through a screening process or referred by a source other than through screening; for example, when a parent or external service provider makes a referral. All referrals for Child Study shall be made to the principal or designee. The committee shall include:

   a. Referring source, as appropriate (except when referring source would breach confidentiality of child).

   b. Principal, or designee;

   c. Teachers; and

   d. Specialists.

   The committee must have at least three persons in attendance.

4. The child study committee shall meet within 10 administrative working days following referral.

5. Actions by the committee shall be documented in writing and shall include information upon which a decision was based. The formal assessment components shall not be initiated (collected) before referral to the special education administrator and parental consent has been obtained.

D. Referral for Evaluation

Children suspected of having a disability shall be referred by the child study committee or other referring source to the special education administrator for formal assessment. If referral to the special education administrator is from the child study committee, it shall be made within five administrative working days following the determination by the child study committee that the child is suspected of having a disability. The special education administrator, or designee, shall:

1. Record the date, reason for referral and name(s) of the person/agency making the referral;
2. Implement procedures for maintaining the confidentiality of all data and institute procedural safeguards to:
   a. Inform the parent of the referral in the native language or primary mode of communication, unless it is clearly not feasible to do so;
   b. Advise the parent of his rights in the native language or primary mode of communication; and
   c. Secure written permission of the parent for the formal assessment;
3. Initiate formal assessment procedures; and
4. Notify the referral source, when appropriate, of the results of the decision regarding determination of eligibility.

E. Evaluation

1. The LEA shall establish procedures for the evaluation of referred children which include the following:
   a. Written prior notification (in native language);
   b. Opportunity for independent evaluation;
   c. Written parental consent;
   d. Assignment of surrogate parent when necessary;
   e. Opportunity for an impartial hearing;
   f. Confidentiality;
   g. Opportunity for examination of records; and
   h. Nondiscriminatory testing.
2. The LEA shall establish policies and procedures to ensure the following:
   a. Tests and other evaluation materials:
      (1) Are neither culturally nor racially discriminatory;
      (2) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;
      (3) Have been validated for the specific purpose for which they are used; and
      (4) Are administered by trained personnel in conformance with the instructions provided by their producer.

b. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

c. Tests are selected and administered so as to best ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

d. No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child;

e. The evaluation shall be made by a multi-disciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability;

3. For a child suspected of having a specific learning disability, the multidisciplinary team:

a. Shall include the child's regular teacher or if the child does not have a regular teacher, a classroom teacher qualified to teach a child of that age, or if a child is below school age, a person qualified to teach that age; and

b. Shall include at least one person qualified to conduct individual diagnostic examinations of children, such as a specific learning disabilities teacher, school psychologist, speech-language pathologist, or remedial reading teacher.

4. For a child suspected of having a learning disability, the evaluation must include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child that age.

5. The LEA shall establish procedures to ensure

a. That each child is assessed by a qualified professional in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. This may include educational, medical, sociocultural, psychological, or developmental assessments. Reports from assessments must be provided in writing. However, the hearing of each child with a disability shall be tested during the eligibility process prior to placement in a special education program. A complete audiological assessment, including tests which will assess inner and middle ear functioning, must be performed on each child who fails two hearing screening tests. The second hearing screening test shall be completed not less than 15 nor more than 45 calendar days after administration of the first screening test.

b. That parents are provided an opportunity to participate, if they so request, in the consideration of the areas to be assessed. Parents must be provided written notification of this right.

6. The LEA shall establish procedures to ensure that eligibility for special education and related services is determined within 65 administrative working days after request for evaluation is received by the special education administrator.

7. A multidisciplinary team may determine that a child has a specific learning disability if:

a. the child does not achieve commensurate with his or her age and ability levels in

one or more of the areas listed in paragraph b of this section when provided with learning experiences appropriate for the child's age and ability levels; and

b. the team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(1) oral expression;

(2) listening comprehension;

(3) written expression;

(4) basic reading skill;

(5) reading comprehension;

(6) mathematical calculations; or

(7) mathematical reasoning.

c. The multidisciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of

(1) a visual, hearing or motor disability;

(2) mental retardation;

(3) serious emotional disturbance; or

(4) environmental, cultural, or economic disadvantage.

F. Eligibility

Eligibility of children for special education programs and related services shall be determined by an eligibility committee.

1. Membership of the eligibility committee shall include, but not be limited to, school division personnel representing the disciplines providing assessments and the special education administrator, or designee. At least one school division representative serving on the eligibility committee must have either assessed or observed the child.

2. The eligibility committee shall review the assessments, any pertinent information reported by an agency assigned legal custody of the child, and any other special reports to determine if the child has a disability which requires special education and related services. Once eligibility has been determined, adding a related service to an existing IEP is an IEP committee function. The assessments or other relevant data that are required or necessary for the proposed related service is forwarded to the IEP committee in order that appropriate goals and objectives can be developed.

3. The eligibility committee shall follow due process procedures in the determination of eligibility and in ensuring the confidentiality of records.

4. The eligibility committee shall have a written summary that consists of essential deliberations supporting its findings as to the eligibility of each child for a special education program and related services. This summary shall be signed by each eligibility committee member present.

a. The written summary shall be maintained in the child's confidential file(s);

b. The summary statement of the eligibility committee's essential deliberations shall be forwarded by the committee to the IEP committee upon determination of

eligibility. The summary statement may include other recommendations. A statement by each eligibility committee member that the summary statement reflects his conclusions shall be included. If the report does not reflect a particular member's conclusion, then a separate statement shall be submitted by the team member presenting his conclusions.

c. The written summary concerning students identified as having a specific learning disability shall also include:

(1) A statement indicating whether or not the child has a specific learning disability;

(2) The basis for making the determination;

(3) Relevant behavior noted during the observation and the relationship of the behavior to the child's academic functioning;

(4) Educationally relevant medical findings, if any;

(5) Information indicating whether or not there is a severe discrepancy between the child's achievement and ability which cannot be corrected without special education and related services;

(6) Effects of any environmental, cultural, or economic disadvantage, as determined by the team; and

(7) A statement by each eligibility committee member that the report reflects his conclusions. If it does not reflect a particular member's conclusion, then the team member must submit a separate statement presenting his conclusions.

G. Termination of Service(s)

1. Termination of one or more related services for a child is a function of the IEP committee. Termination of related services occurs when the IEP committee determines that the service(s) are no longer required in order for the child to benefit from special education.

2. Termination of all special education services for a child (i.e., removal from special education) shall be the responsibility of the eligibility committee. The IEP committee shall refer a student to the eligibility committee when they believe the child is no longer eligible to receive special education. Termination of special education services occurs:

a. If the eligibility committee determines that the services are no longer required based on the fact that the child no longer meets the eligibility criteria for special education and related services and parental consent has been obtained; or

b. If the parent withdraws permission for the child to remain in special education, then the decision of the parent to withdraw the child from special education must be reviewed by the LEA pursuant to the change in placement procedures. If the LEA disagrees with the withdrawal decision and attempts to resolve parental withdrawal of consent through informal methods are unsuccessful, the LEA must use other measures as necessary to ensure that parental withdrawal of consent will not result in the withdrawal of a necessary free appropriate public education.

H. Child's Status Pending Determination of Eligibility

The child shall remain in the current placement during determination of eligibility for special education and related services.

I. Child's Status - Previous Enrollment in Special Education

If a child enrolled in a special education program transfers from one LEA to another LEA or from out of state to an LEA, the child shall be placed with written consent of the parent in a special education program consistent with the current IEP. The IEP committee may decide to continue with the placement. If the IEP committee believes the transfer will necessitate a change in educational placement, then the eligibility committee shall review the existing evaluations and conduct new evaluations or update them as appropriate. Pending the eligibility committee's and IEP committee's determination, the child shall be placed with consent of the parent in a special education program consistent with the current IEP. In the case of a child placed in a private residential school, absent parental consent or absent an appropriate program within the LEA, the child will remain in the private residential school until the eligibility committee and IEP committee have made a decision.

## §3.3 Service Delivery

A. Free Appropriate Public Education

1. Age of Eligibility

A free appropriate public education shall be available to all children with disabilities, ages two to 21, inclusive, residing within the jurisdiction of each LEA. Each LEA shall have established the goal of providing a full educational opportunity for all children with disabilities from birth to 21, inclusive, residing within their jurisdiction.

2. Continuum of Alternative Placements

a. Each local school division shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities.

(1) The continuum must include the alternative placements listed in the definition of special education (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). The continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, that is, where some or all goals and objectives of the student's Individualized Educational Program are met in the general education setting with age-appropriate peers.

(2) No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements (e.g., resource classes as the only option for children who need a self-contained placement or a separate facility as the only alternative placement for students with disabilities). All placement decisions must be based on the individual needs of each child.

(3) LEAs shall document fully all alternatives considered and the rationale for choosing the selected placement.

(4) Children with disabilities must be served in a program with age-appropriate peers (e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school), unless it can be shown that for a particular child with a disability the alternative placement is appropriate as documented by the IEP.

b. If a local school division is unable to provide a free appropriate public education to a child with a disability and it is not appropriately available in a State facility, other than Woodrow Wilson Rehabilitation Center, the local school division shall offer to place the child in Woodrow Wilson Rehabilitation Center or a nonsectarian private school for children with disabilities approved by the Board of Education or such other licensing agency as may be designated by state law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined under the rules of the Interdepartmental Council on Rate-Setting as adopted by the Boards of Education, Social Services and Corrections. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate.

3. Least Restrictive Environment (LRE)

a. Each LEA shall establish and implement procedures which satisfy requirements as follows:

(1) To the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children who are not disabled; and

(2) Special class placement, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

b. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for nondisabled children, each LEA shall ensure that each child with a disability participates with nondisabled children in those services and activities, to the maximum extent appropriate to the needs of the child with a disability.

c. For children in public or private institutions, the LEA shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See Placements, §3.3 B.8.)

4. Safeguards in Evaluation, Eligibility and Placement

a. In interpreting evaluation data and in making eligibility and placement decisions, each LEA shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the least restrictive environment. (See Least Restrictive Environment, §3.3 A.3.)

b. If it is determined that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with the regulations.

5. Transportation

a. Each child with a disability placed in an education program by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities.

b. If an LEA enters an agreement with another LEA for the provision of special education and/or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent.

c. If a child with a disability is placed in a state residential school for the deaf and the blind, the responsibility for transportation resides with the respective state school.

However, when such children in a state residential school are educated as day students, the responsibility for transportation remains with the placing local school division.

6. Reevaluation

a. A reevaluation in all areas related to the suspected disability must be conducted (1) every three years; (2) if conditions warrant a reevaluation at an earlier date; or (3) if the child's parent or teacher requests a reevaluation.

b. A reevaluation need not consist of all of the same assessments conducted during the initial evaluation as long as the reevaluation includes assessment in all areas related to the suspected disability. If three years have not elapsed and the parent or teacher requests that only specified areas be addressed by additional evaluation, and conditions do not warrant a reevaluation or an assessment which is more comprehensive than that requested by the parent or teacher, the LEA may limit the assessment to those areas in which the parent or teacher requested.

c. Notice is required for all reevaluations.

7. Non-academic and extracurricular services and activities

Each LEA shall take steps to provide non-academic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

8. Physical Education

a. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

b. Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless-

1. the child is enrolled full time in a separate facility; or

2. the child needs specially designed physical education, as prescribed in the child's IEP.

c. Special physical education. If specially designed physical education is prescribed in a child's IEP, the LEA responsible for the education of that child shall provide the

services directly, or make arrangements for those services to be provided through other public or private programs.

d. Education in separate facilities. The LEA responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs a and c of this section.

B. Individualized Education Program

1. Responsibility

The LEA shall ensure that an IEP is developed and implemented for each child with a disability in its jurisdiction, including such children placed in private schools or facilities.

2. Accountability

a. An IEP must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be developed within 30 calendar days of a determination that the child needs special education and related services, and be implemented as soon as possible following the IEP meeting.

b. Each LEA is responsible for initiating and conducting meetings to develop, review and revise a child with a disability's IEP.

c. Each LEA shall initiate and conduct meetings periodically to review each child's IEP and, where appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

d. Each LEA must provide special education and related services to a child with a disability in accordance with an IEP.

3. Participants in Meeting

a. The LEA shall ensure that each meeting includes participants as follows:

(1) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(2) The child's teacher;

(3) One or both of the child's parents (see Parent Participation, §3.3 B.4);

(4) The child, if appropriate;

(5) Other individuals, at the discretion of the parents or LEA.

b. For a child with a disability who has been evaluated for the first time, the LEA shall ensure that:

(1) A member of the evaluation team participates in the meeting; or

(2) The representative of the LEA, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

c. If a purpose of the IEP meeting is the consideration of transition services for a student, the public agency shall invite:

(1) The student; and

(2) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

(3) If the student does not attend, the LEA shall take other steps to ensure that the student's preferences and interests are considered; and

(4) If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Parent Participation

a. Each LEA shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend, and

(2) Scheduling the meeting at a mutually agreed on time and place.

b. The notice given the parents must indicate the purpose, time and location of the meeting, and who will be in attendance.

c. If a purpose of the meeting is the consideration of transition services for a student, the notice must also:

(1) Indicate this purpose;

(2) Indicate that the LEA will invite the student; and

(3) Identify any other agency that will be invited to send a representative.

d. If neither parent can attend, then the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

e. A meeting may be conducted without the child's parent(s) attending if the LEA is unable to convince them that they should attend. In this case, the LEA must have a record of the attempts to arrange a mutually agreed on time and place, such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses;

(3) Detailed records of visits made to the parents' home or place of employment and the results of those visits.

f. The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

g. The LEA shall give the parent a copy of the IEP.

5. Content of the Individualized Education Program

The IEP for each child must include:

a. A statement of the child's present level of educational performance;

(1) The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and non-academic areas.

(2) The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.

(3) There should be a direct relationship between the present level of performance and the other components of the IEP.

b. A statement of annual goals, including short-term instructional objectives;

c. A statement of the specific special education and related services to be provided for the child, and the extent to which the child will be able to participate in regular educational programs.

d. The projected dates for initiation of services and the anticipated duration of the services (month, day, and year); and

e. Appropriate objective criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term instructional objectives are being achieved.

f. For students beginning in the sixth grade, the following information concerning the Virginia Literacy Passport Testing Program must be included:

(1) Whether the student will participate in the Literacy Passport Testing Program (a decision to exempt the student from participating must be reviewed during the annual IEP review or sooner);

(2) Whether the student will postpone taking any of the literacy tests (a decision to postpone must be reviewed during the annual IEP review or sooner);

(3) Reasonable accommodations to take the literacy tests if the student needs them.

The school division shall document on the IEP that the Literacy Passport Testing Program and the requirement that the student pass all of the literacy tests to receive a regular diploma have been presented to the parent.

g. The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

The IEP must include the following areas:

1. Instruction;

2. Community experiences;

3. The development of employment and other post-school adult living objectives; unless the IEP Committee determines that services are not

needed in one or more of those areas. The IEP Committee must then include a statement to that effect together with the basis for that determination in the IEP.

h. A statement as to whether or not the student will participate in Family Life Education.

6. Agency Responsibilities for Transition Services

a. If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

b. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

7. Placements

Each LEA placing the child shall ensure that:

a. The educational placement of each child with a disability:

(1) Is determined at least annually;

(2) Is based on his IEP; and

(3) Is as close as possible to the child's home.

b. The various alternative placements, discussed in §3.3A2 of these regulations, are available, to the extent necessary, to implement the IEP for each child with a disability.

c. Unless a child with a disability's IEP requires some other arrangement, the child is educated in the school which he would attend if nondisabled.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he needs.

e. The placement decision shall include consideration of the child's social and personal needs, as well as the child's level of educational functioning.

8. Private School Placement

a. Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child.

b. Where a child is presently receiving the services of a private school or facility, or where the parents and the LEA agree, prior to the development of an IEP that a private school or facility may be required when the IEP is completed, the LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

c. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

d. If the private school or facility initiates and conducts these meetings, the LEA shall ensure that the parents and a LEA representative:

(1) Are involved in any decision affecting the child's IEP; and

(2) Agree to any proposed changes in the program before those changes are implemented.

e. When a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA.

f. Whenever an eligible child with a disability is placed in an approved private school or facility by a LEA, all rights extended to any child educated in public school programs shall be available to him.

9. Children With Disabilities in Private Schools Not Placed or Referred by Public Agencies

a. If a child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, then the local school division is not required to pay for the child's education at the private school or facility. However, the local school division shall make services available to the child as follows:

(1) Each local school division shall provide special education and related services designed to meet the needs of private school children with disabilities residing in its jurisdiction;

(2) Each local school division shall provide private school children with disabilities with genuine opportunities to participate in special education and related services consistent with the number of children and their needs.

b. The needs of private school children with disabilities, the number who will participate, and the types of special education and related services which the local school division will provide for them must be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used in providing for the participation of children with disabilities enrolled in public schools.

c. A local school division may provide special education and related services to private school children with disabilities which are different from the special education and related services it provides to public school children, if:

(1) The differences are necessary to meet the special needs of the private school children with disabilities; and

(2) The special education and related services are comparable in quality, scope, opportunity for participation to those provided to public school children with needs of equal importance.

d. Each LEA providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.

10. Children with Disabilities on Homebound Instruction

Homebound instruction shall be deemed appropriate for a child with a disability only when such placement is stipulated in the child's IEP and is in accordance with the requirements of the least restrictive environment.

11. Suspension or Expulsion of Children with Disabilities

a. Suspensions of 10 Days or Less

A short term suspension is when the child is removed from class (i.e., an in-school suspension) or school for ten school days or less. It does not constitute a change in placement. The child is subject to normal disciplinary procedures whether or not there is a causal connection between the child's disability and the misconduct.

b. Long-term Suspensions Greater Than 10 Days and Expulsions

(1) When the child is removed from class or school for more than 10 consecutive school days, a determination must be made as to whether or not there is a direct causal relationship between the child's disability and the misconduct.

(2) This determination must be made pursuant to the change in placement procedures by a committee with the following composition:

(a) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(b) The child's teacher;

(c) One or both of the child's parents;

(d) The child, if appropriate;

(e) Persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

(f) Other individuals, at the discretion of the parents or LEA.

(3) A series of suspensions which aggregate to more than 10 days may be considered a significant change in placement requiring reevaluation and procedural protections. Factors to consider in determining whether aggregate suspensions of greater than 10 days are long-term suspensions include length of each suspension, proximity of suspensions, and total amount of time suspended.

(4) If there is a causal connection or if the child was inappropriately placed at the time of the misconduct, the child may not be expelled, nor may the LEA impose a long-term suspension. If there is no causal connection and if the child was appropriately placed at the time of the misconduct, the child may be disciplined the same as a nondisabled child.

(5) In the case of an expulsion or long-term suspension, parental consent is not required.

c. Dangerous Student With a Disability

LEAs may not unilaterally change the placement of a student with dangerous behavior when the misconduct is caused by the disability. LEAs, however, may use normal disciplinary measures for a child who exhibits dangerous behavior to include, for example, time outs or suspension up to 10 days. An LEA may only impose an expulsion or long-term suspension on a student with a disability whose misconduct has been determined to be caused by his disability by obtaining an injunction, based on dangerousness of the student, from a court of competent jurisdiction.

12. Assistive Technology

Each LEA shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's:

a. Special education;

b. Related services; or

c. Supplementary aids and services.

C. Educational Interpreting Services

1. Educational personnel providing interpreting services for students using sign language shall have achieved a Virginia Quality Assurance Screening Level III or hold any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation).

2. Educational personnel providing interpreting services for students using Cued Speech shall have achieved a Virginia Quality Assurance Screening Cued Speech Level III or National Cued Speech Association Cued Speech Transliterator Certificate.

3. Educational personnel providing interpreting services for students requiring oral interpreting shall have met Virginia Quality Assurance Screening's minimum requirements for competency on the Registry of Interpreters for the Deaf Code of Ethics.

4. An individual providing interpreting services for students using sign language or Cued Speech who does not hold the required Virginia Quality Assurance Screening level or Registry of Interpreters for the Deaf certificate (excluding certification in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate may be employed according to all of the following criteria:

a. The individual must have a Virginia Quality Assurance Screening Level I upon hiring date in any local education agency or state operated program in Virginia (or the implementation date of these regulations, whichever is later). The local education agency/state operated program shall inform the Department of Education of the person's name, social security number and hiring date; and

b. Each individual must achieve Level III Virginia Quality Assurance Screening or any Registry of Interpreters for the Deaf Certificate (excluding certification in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate by the third anniversary date of hiring in any local education agency or state operated program (or implementation date of these regulations, whichever is later); and

c. The local education agency/state operated program shall annually submit a professional development plan to the Virginia Department of Education on behalf of the individual.

## §3.4 Procedural Safeguards

A. Due Process

1. Procedural Safeguards

Each LEA shall establish and implement procedural safeguards as follows:

a. The parent of a child with a disability, upon request, shall be afforded an opportunity to inspect and review all education records involving:

(1) The identification, evaluation or educational placement of the child; or

(2) The provision of a free appropriate public education to the child. (See: Management of the Student's Scholastic Records)

b. The parent of a child with a disability shall be provided, on request, information as to where an independent educational evaluation (IEE) may be obtained.

c. The parent of a child with a disability shall have the right to obtain an IEE of the child:

(1) Such IEE will be at public expense if the parent disagrees with the evaluation obtained by the LEA; however, the LEA shall have the right to initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate then, the parent still has the right to an IEE, but not at public expense.

(2) Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA uses when it initiates an evaluation.

(3) The results of the IEE whether or not at public expense:

(a) Must be considered by the LEA in any decision regarding a free appropriate public education for the child; and

(b) May be presented as evidence at a hearing under §3.4A2 of these regulations.

d. The parent of a child with a disability shall be given written notice within a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education for the child.

e. The notice shall include:

(1) A full explanation of all procedural safeguards available to the parents;

(2) A description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any options the LEA considered and the reasons why those options were rejected;

(3) A description of the nature, purpose, and use of any evaluation procedure, test, record, or report the LEA used as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the LEA's proposal or refusal.

f. Information contained in the notice shall be:

(1) Written in language understandable by the public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent is not a written language, then the LEA shall take steps to ensure:

(a) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) That the parent understands the content of the notice; and

(c) That there is documentation that the requirements in paragraphs (a) and (b) have been met.

g. Written parental consent shall be obtained before:

(1) Pre-placement evaluation;

(2) Initial placement of a child with a disability in a program providing special education and related services; and

(3) Any change in program/placement, including any partial or complete termination of special education and services, except for expulsions and graduation. Consent for placement may be revoked up until the first day of the placement.

h. Written parental consent shall be obtained for the following:

(1) Any change in identification of a child with a disability and

(2) Any evaluation which is conducted other than the triennial evaluations. (Parental consent is not necessary for reviewing the child's records for conducting a reevaluation.)

Consent for initial placement may be revoked by the parent at any time prior to the first day of that placement.

i. Except for preplacement evaluation and initial placement, consent or refusal to give consent for those other situations requiring consent shall be given by the parent to the LEA within ten administrative working days after notice is received. If the parent fails to notify the LEA within ten administrative working days, the LEA may proceed as if consent had been granted, and the parent must initiate due process to contest the action. If the parent refuses to give consent, the LEA shall attempt to resolve parental withholding of consent through informal means. If those informal methods are not successful, the LEA must use other measures as necessary to ensure that, except for preplacement evaluation and initial placement, parental refusal to consent will not result in a denial of a necessary free appropriate public education.

2. Impartial Due Process Hearing

Each LEA or the parent of a child determined or believed to have a disability, shall have the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation (including determination of whether or not an IEE at public expense is appropriate), or educational placement of the child or the provision of a free appropriate public education for the child. The LEA may initiate due process to appeal parental withholding of consent where these regulations require the LEA to obtain consent.

3. Child's Status During Proceedings

The child's status during proceedings shall be as follows:

a. During the pendency of any administrative hearing or appeal or during the pendency of any judicial proceeding regarding these regulations, unless the LEA and the parent of the child agree otherwise, the child must remain in his current educational placement. While the placement may not be changed, this does not preclude using normal procedures for dealing with children who are endangering themselves or others. Such procedures do not include expulsion or suspension over ten days; however, the procedures may include time-out, detention, restriction of privileges, or temporary suspension up to ten days.

b. If the issue involves an application for initial admission to public school, the child of school age, with consent of the parent, must be placed in a public school program until the completion of all proceedings.

4. Mediation

The regulations do not preclude the use of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent's rights. Such mediation may be conducted only by personnel who were not previously involved in the particular case. However, such mediation shall not extend the resolution of a hearing beyond the 45 calendar days unless otherwise approved and documented as in the best interests of the child by the hearing officer upon request of the parties. The hearing officer shall notify the parties and the SEA in writing of the specific number of days to be allowed for mediation.

5. Commencement of the Due Process Hearing

a. Request for a hearing shall be made in writing to the LEA or other public agency board as appropriate.

b. The LEA shall inform the parent of any free or low-cost legal or other relevant services available in the area as well as the attorney fees provision of §3.4A12 when:

(1) The parent requests the information; or,

(2) The parent or the LEA initiate(s) a hearing.

c. The LEA shall ensure that the Virginia Supreme Court appoints a hearing officer within five administrative working days following the request for a hearing to facilitate compliance with the 45 calendar days timeline.

6. Qualifications, Removal, Substitution and Challenge of Hearing Officers.

"Impartial Hearing Officer" means a person selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted

a. By a person employed by an agency involved with the care or education of the child; or

b. By a person having a personal or professional interest which would conflict with his or her objectivity in the hearing. A hearing officer is not an employee of the LEA or SEA solely because he or she is paid by the agency to serve as a hearing officer.

Appointment, qualifications, retention, training, selection, removal and disqualification of Hearing Officers are governed by the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia.

7. Responsibilities of LEA - Pre-Hearing

a. The confirmation of the appointment of the hearing officer by the LEA shall be done in such a manner as to protect the confidentiality of the parent(s) and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing in order to ensure that timelines are maintained.

b. The LEA shall send a copy of the correspondence confirming the appointment of a hearing officer along with a copy of the request for a hearing to the SEA within five administrative working days of the appointment of a hearing officer.

c. The LEA shall arrange for recording equipment to be set up, or a stenographer to be present, in the hearing room. The LEA shall also ensure that the recording

equipment, if used, is reliable and working and that the recording is clear and can be transcribed, if necessary. A complete, accurate, written verbatim transcript of the proceedings need not be made at the conclusion of the hearing, unless the hearing officer needs it for review prior to rendering a decision. When there is an appeal of the decision, a verbatim copy of the recording or transcript shall be supplied to the parties to the appeal, upon request, and free of charge.

d. Each LEA shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

8. Responsibilities of the Hearing Officer - Pre-Hearing

a. The hearing officer shall, within five administrative working days of appointment, secure a time, date and location for the hearing which are convenient to both parties, and notify both parties to the hearing and the SEA, in writing, of the time, date and location of the hearing.

b. The hearing officer shall ascertain whether or not the parties will have attorneys at the hearing. If so, the hearing officer shall send copies of correspondence to the attorneys of the parties.

c. The hearing officer shall ascertain from the parents whether the hearing will be open.

d. The hearing officer shall ensure that a stenographer or recording equipment is present at the hearing and ensure that testimony is clearly recorded, either by the stenographer or recording equipment, to permit an accurate record of the proceedings. If a tape recorder is used, the hearing officer shall be provided a written list of speakers in order of appearance, and at the beginning of the hearing identify on tape each speaker's title, position, and interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall state his name for the record.

e. The hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than five administrative working days prior to the hearing.

f. The hearing officer may schedule a pre-hearing conference to be attended by the parties and attorneys, if appropriate. Such a conference may be requested by the hearing officer or the parties to the hearing to clarify or eliminate issues.

g. The hearing officer has power to issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence.

(1) The hearing officer may procure an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

(2) Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not question or modify the subpoena after objection thereto.

h. The hearing officer shall ensure that the LEA has appointed a surrogate parent who is acting to protect the educational interests and rights of the child in accordance with §3.5 of these regulations.

9. Rights of Parties to the Hearing

a. Any party to a hearing shall have the right to:

(1) Be accompanied and advised by counsel and/or by individuals with special knowledge or training concerning the problems of children with

disabilities without being in violation of the provisions of §54.1-3904 of the Code of Virginia as amended.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five administrative working days before the hearing.

(4) Receive written findings of fact and decisions rendered by the hearing officer.

b. The parent(s) involved in a hearing must be given the right to:

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public;

(3) Receive a copy of the implementation plan;

(4) Obtain the written or electronic verbatim record of the hearing upon request and free of charge.

10. Due Process Hearing Procedure

a. The rights of all parties to the hearing shall be protected by the hearing officer.

b. The hearing officer shall ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. The hearing officer may excuse witnesses after they testify to limit the number of expert witnesses present at the same time or to sequester witnesses during the hearing.

c. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning.

d. The hearing officer shall remand the matter in dispute to a conference between the parties only when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to delay or deprive the parties of their rights and shall be exercised only when the best interest of the child will be served.

e. The hearing officer may require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment.

f. The hearing officer, in the course of the proceedings, shall include in the written findings a determination of the following:

(1) Whether or not the requirements of notice to parents were satisfied;

(2) Whether or not the child has a disability;

(3) Whether or not the child needs special education and related services; and

(4) Whether or not the LEA is supplying a free appropriate public education.

g. The hearing officer shall make no presumptions in the case and shall base his findings of fact and decision(s) solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law.

h. The hearing officer shall report findings of fact and decision(s) to both parties to the appeal, the LEA, and to the SEA.

i. A decision made by the hearing officer is final, unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of the hearing decision.

11. Administrative Appeal and Impartial Review

a. If there is an appeal of the decision of a hearing officer, the SEA shall ensure an impartial review of the hearing. The review shall be conducted by a reviewing officer appointed according to the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia. The SEA shall ensure the appointment within two administrative days of the receipt of a request for a review of a due process hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, then all hearing rights as specified in this section apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary;

(6) Make an independent decision upon completion of the review; and

(7) Give a copy of written findings and the decision(s) to the parties to the appeal, the LEA and to the SEA in the manner prescribed.

b. The decision made by the reviewing official is final and binding on all parties, unless any party aggrieved by the findings and decisions of the administrative review brings civil action in any state court of competent jurisdiction within one year or in federal district court. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence in its discretion at the request of either party, and basing its decision on the preponderance of the evidence, shall grant such relief as it determines to be appropriate.

12. Attorney's Fees

a. In any such action or proceeding, the court in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardian of a child with a disability who is the prevailing party.

b. If a written offer of settlement is made to a parent or guardian within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins, and the offer is not accepted within 10 days and the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parent or guardian than the offer of settlement, no award of attorney's fees and related costs may be made for services performed subsequent to the time of such offer, unless the court finds that the prevailing party was reasonably justified in rejecting the settlement offer.

13. Timelines for Hearings and Reviews

    a. The LEA shall ensure that not later than 45 calendar days after the receipt of a request for a due process hearing:

        (1) A final decision is rendered in the hearing, unless otherwise documented by the hearing officer; and

        (2) A copy of the decision is mailed to the parties and the SEA.

    b. The SEA shall ensure that no later than 30 calendar days after the receipt of a request for a review:

        (1) A final decision is rendered in the review, unless otherwise documented by the reviewing officer; and

        (2) A copy of the decision is mailed to the parties.

    c. A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs a. and b. of this section at the request of either party. This action shall in no way be used to delay or deprive the parties of their rights and should be exercised only when the best interests of the child will be served. Changes in hearing dates or extensions are to be noted in writing which shall be sent to all parties and to the SEA.

    d. Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parent and child involved.

14. Costs of Due Process Hearings and State Review

    a. Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs shared by the SEA shall include expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses), expenses incurred by order of the hearing or reviewing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes and/or stenographer). The SEA shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees.

    b. The SEA shall be responsible for all approved costs for state reviews.

15. Implementation Plan

    a. The LEA shall develop an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing or review request. Such plan shall be based upon the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall include the name and position of a case manager in the LEA charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing and/or reviewing officer, and the SEA.

    b. Failure of either of the parties to comply with the implementation plan shall be reported to the SEA for investigation and/or appropriate action.

16. Due Process File

The LEA shall maintain a file containing the following:

a. A copy of the hearing and reviewing officer's findings of fact and decision;

b. A copy of the implementation plan;

c. A copy of the electronic or verbatim transcript of the hearing proceedings; and

d. A copy of all documents and exhibits presented at the due process hearing and state level review.

B. Confidentiality of Information

The Confidentiality of Information shall be as set forth in the Management of the Student's Scholastic Record.

C. Complaint Procedure

Complaints regarding violations of rights of parents and/or children with disabilities shall be addressed to the Superintendent of Public Instruction or designee, with the additional requirements as follows:

1. The complaint must be in writing, signed by the organization or individual filing the complaint, and contain a statement that an LEA has violated the Individuals with Disabilities Education Act (IDEA) and/or these regulations.

2. The complaint must contain a statement of facts on which the complaint is based. In addition, all relevant documents shall be forwarded to the Superintendent of Public Instruction or designee .

3. Upon receipt of a complaint, the Superintendent of Public Instruction or designee shall initiate an investigation to determine whether or not the LEA against whom such complaint has been filed is in compliance with applicable law and regulations.

4. Within seven administrative days of the receipt of a written, signed complaint, the Superintendent of Public Instruction or designee shall send notification in writing to each complainant and LEA against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate SEA personnel. The notification sent to the complainant shall provide the complainant with an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The notification sent by the SEA complaint officer to the LEA shall include:

a. A copy of the complaint;

b. An offer of technical assistance in resolving the complaint; and

c. Request for written response to the complaint within 10 administrative days of the receipt of the letter of notification.

5. If a reply from the LEA is not filed with the Superintendent of Public Instruction or designee within 10 administrative days of the receipt of the notice, then the Superintendent of Public Instruction or designee shall send a second notice to the LEA advising that failure to respond within seven administrative days of the date of such notice will result in review by the Superintendent of Public Instruction for action regarding appropriate sanctions.

6. The Superintendent of Public Instruction or designee shall take action with respect to the response as follows:

a. Review the complaint and reply filed by the LEA to determine if further investigation or corrective action needs to be taken. If no further investigation or action is

necessary, then the Superintendent of Public Instruction or designee shall notify both parties, in writing, stating the grounds for such finding.

b. Conduct an investigation of the complaint which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary.

c. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

d. Make a determination of compliance or non-compliance based upon the facts and applicable law and notify the parties, in writing, of the findings and the basis for such findings. A time limit of 60 calendar days shall be allowed, after the written complaint is received, to carry out the investigation and to resolve the complaint. An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the Superintendent of Public Instruction or designee whenever exceptional circumstances exist and specify the extended time limit.

e. Report findings of non-compliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

7. The Superintendent of Public Instruction or designee will notify the parties in writing of any needed corrective actions and the specific steps which must be taken by the LEA to bring it into compliance. The LEA will be given 15 administrative days from the date of notice of non-compliance to respond and initiate corrective action.

8. Where the LEA develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 administrative days. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the SEA.

9. If the LEA does not come into compliance within the period of time set forth in the notification, then the matter will be referred by the Superintendent of Public Instruction to the Board of Education for a hearing.

10. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Board of Education, finds that the LEA has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, then he shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that LEA until there is no longer any failure to comply with the applicable law and/or regulation.

11. Parties to the complaint procedure shall have the right to request the United States Secretary of Education to review the final decision.

## §3.5 Requirements for Establishing Surrogate Parent Procedures for LEAs and Applicable State Agencies and Institutions

A. Role of Surrogate Parent

The surrogate parent requirement in both state and federal laws and regulations is intended to ensure appropriate decision making in educational matters. The surrogate parent is an advocate acting to serve the best educational interests of a child who is suspected of having, or is determined

to have, a disability. State and federal regulations require that the surrogate parent represent the child in all matters relating to:

1. The identification, evaluation, or educational placement of the child; or
2. The provision of a free appropriate public education to the child.

B. Appointment of Surrogate Parents

1. Children (ages two to 21, inclusive) who are suspected of being or determined to have disabilities, whose natural parent(s) or guardian(s) have allowed relatives or private individuals to act as parents to the child, do not require a surrogate parent.

   A surrogate parent shall be appointed for a child, ages two to 21, inclusive, who is suspected of having or determined to have a disability when:

   a. No parent or person who has been allowed to act as a parent by the natural parent(s) or guardian(s) can be identified;

   b. The LEA, after reasonable efforts, cannot discover the location of a parent; or

   c. The child is a ward of the state.

2. Each LEA shall establish procedures for identifying children in its jurisdiction who are in need of surrogate parents according to the definition.

3. Each LEA shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA superintendent or designee.

   a. The appointment having been effected, the LEA shall notify in writing:

      (1) The child with a disability (ages two to 21, inclusive), as appropriate to the disability;

      (2) The surrogate parent-appointee;

      (3) The person charged with responsibility for the child;

      (4) The public agency charged with responsibility for the child when the child is a ward of the State;

      (5) The SEA.

   b. LEAs are required to send parents' copy of notice to child's guardian and/or custodial state agency. In instances where the LEA has not been able to locate the present whereabouts of the parent(s), a letter to the parents' last known address is evidence of the LEA's good faith effort to effect this requirement.

   c. The surrogate parent shall serve during, or for the duration of, the school year for which he is appointed.

      (1) When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of that current document.

      (2) Should a child require the services of a surrogate parent during the summer months, the LEA shall extend the appointment as needed, consistent with timelines required by law.

   d. At the conclusion of each school year, appointment of surrogate parents shall be renewed or not renewed following a review by the LEA.

4. Each LEA shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before his appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

   a. The child reaches the age of majority (except those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship);

   b. The child is found no longer eligible for special education services (except when termination of special education services is being contested);

   c. Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent;

   d. A parent, who was previously unknown or unavailable, is now known or available; or

   e. The appointed surrogate parent is no longer eligible (see "Qualifications for Surrogate Parent").

C. Identification and Recruitment of Surrogate Parents

1. The LEA shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for LEAs to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. It should be noted, however, that geographic proximity is essential to the relationship between the child with a disability and the surrogate parent.

2. Individuals who are not on the LEA list may be eligible to serve as surrogate parents, subject to the LEA's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the LEA's determination of surrogate eligibility. Other factors which warrant the LEA's attention are as follows:

   a. Consideration of the appointment of a relative to serve as surrogate parent;

   b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

   c. Consideration of the appointment of a qualified person of the same racial, cultural, and linguistic background as the child who is suspected of having or has been identified as having a disability; and

   d. The appropriateness of the child's participation in the selection of his surrogate parent.

D. Qualifications of Surrogate Parents

Each LEA shall ensure that a person appointed a surrogate:

1. Has no interest that conflicts with the interest of the child he represents;

2. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed an SEA approved training session prior to representing the child. The LEA shall provide training, at least annually, for surrogate parents to ensure that they possess knowledge of special education and related services for children with disabilities, as well as knowledge of the legal requirements necessary to represent the children effectively.

3. Is not an employee of a public agency which is involved in the education or care of the child;

4. Is an adult and legal citizen of the United States; and

5. Resides in the same general geographic area as the child, whenever possible.

A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he is paid by the agency to serve as a surrogate parent.

E. Rights of Surrogate Parents

The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents of children determined or suspected to have disabilities.

## §3.6 Administration and Governance

A. Plans, Applications and Reports

1. Each LEA is required to prepare and submit to the appropriate state authority the following:

a. To the SEA, by such date as the Board may specify, acceptable Annual Special Education Plan/Report and Funding Applications that:

(1) Specifies plans for providing a free appropriate education and related services to all children with disabilities for the following year; and

(2) Reports on the extent to which the plan for the preceding year has been implemented.

b. To the SEA, an application for funding under Part B of Public Law 94-142 as amended or Public Law 89-313 as amended, containing assurances of compliance in accordance with various procedures outlined by the SEA.

2. Each LEA shall include the following provisions and assurances in the Annual Special Education Plan/Report and Funding Applications:

a. A free appropriate public education will be available for each child with a disability, ages two to 21, inclusive.

b. All children, ages two to 21, inclusive, residing in the LEA who have disabilities and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program.

c. Children with disabilities and their parents or guardians are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement, or the provision of a free appropriate public education.

d. To the maximum extent appropriate, children with disabilities will be educated with children who are nondisabled.

e. Confidential records of children with disabilities shall be properly maintained.

f. Testing and evaluative materials used for the purpose of classifying and placing children with disabilities are selected and administered so as not to be racially or culturally discriminatory.

g. An individualized education program will be maintained for each child with a disability.

h. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the needs of children with disabilities is provided.

i. There will be on-going parent consultation.

j. A full educational opportunity goal is provided for all children with disabilities, from birth to age 21, inclusive, including appropriate career education, pre-vocational education, and vocational education.

k. Children with disabilities must be given the right of participating in the Literacy Testing Program (LTP) program.

3. Each LEA shall also ensure that all required special education plans, applications, reports, and program evaluations are available for public inspection.

B. Personnel Development

Each LEA shall establish a program and procedures for the development and implementation of a comprehensive system of personnel development which shall include:

1. In-service training for all general and special education instructional, related services, and support personnel; and

2. Procedures to ensure that all personnel who are responsible for the instructional programs or delivery of related or support services to children with disabilities are properly certified and endorsed.

C. Local Advisory Committee

There shall be a local advisory committee for special education appointed by each local school board to advise the school board through the division superintendent. The composition of the committee shall include parents of children with disabilities.

1. Local school division personnel shall serve only as consultants to the committee.

2. The functions of the local advisory committee shall be as follows:

   a. Advise the local school division of unmet needs in the education of children with disabilities;

   b. Assist the local school division in the formulation and development of long-range plans designed to provide needed educational services for children with disabilities;

   c. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;

   d. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board; and

   e. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services.

3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

4. Committee meetings shall be held at least quarterly and shall be open to the public.

5. One meeting shall be designated specifically for the review of the Annual Special Education Plan/Report and Funding Applications prior to submission to the local school board.

D. Regional Programs

1. Where it becomes necessary for local school divisions to develop regional or cooperative programs to serve their children with disabilities, such regional programs shall be provided in accordance with least restrictive environment requirements.

2. Where LEAs elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint Board shall be established to manage and control the jointly owned or operated program, center or school. Establishment of the joint Board, and administration of the jointly operated program shall be conducted in accordance with the Board of Education regulations governing such programs.

3. The Annual Special Education Plan/Report and Funding Applications of each LEA participating in a regional program shall contain a description of its program, activities and supervisory involvement as prescribed by the SEA. Each joint Board may submit a composite Annual Special Education Plan/Report and Funding Applications which is composed of excerpts from each of the participating LEAs.

4. Each joint Board shall appoint a qualified director who shall be the administrative head of the cooperative unit. The director shall be responsible for the administration of programs and services which are approved by the governing body.

# PART IV
# Funding

## §4.1 Reimbursement to LEAs and State-Operated Programs

A. State and federal funds administered by the SEA are disbursed to LEAs and state-operated programs in accordance with the following requirements:

1. Compliance with regulations of the Board of Education including those for accreditation;
2. Education programs for children with disabilities shall be operated pursuant to an approved Annual Special Education Plan/Report and Funding Applications;
3. Special education teachers, speech-language pathologists, school psychologists, visiting teachers, school social workers, and supervisors of special education shall meet fully the Board of Education licensure and endorsement requirements for such employment;
4. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the appropriations act.

## §4.2 State Funds

State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities are provided through the SEA's appropriation as follows:

A. Children with disabilities enrolled in programs operated by a local school board:

1. Day school programs

   In addition to the funds received for each pupil from Basic Aid, LEAs will receive payment to support the state share of the number of special education teachers and aides required by the Standards of Quality.

2. Homebound instruction

   LEAs shall be reimbursed 60 percent of the hourly payment to teachers employed to provide homebound instruction to eligible children. Such reimbursement shall not exceed 60 percent of an established hourly rate determined annually by the Department, and shall be in addition to Basic Aid.

3. Transportation

   Children with disabilities, ages two to 21, inclusive, transported on approved school buses or on public transit buses to public schools or approved private schools pursuant to their IEPs are funded in accordance with pupil transportation regulations.

B. Children with disabilities enrolled in regional special education programs:

1. Reimbursement is available for a portion of the tuition costs based on the local composite index computed at 60%. Rates will be approved following procedures established by the Board of Education. Regional special education programs operated by a joint Board, or for LEAs operating a residential program accepting eligible children with disabilities from other local school division(s) who have:

a. A severe and profound disability

b. A serious emotional disturbance

c. Autism

d. Multiple disabilities

e. Deafness

f. A hearing impairment

g. Deaf-Blindness

h. A traumatic brain injury.

2. Such reimbursement shall be in lieu of the per pupil basic operation cost and other state aid otherwise available for each child. Decisions regarding the determination of reasonable tuition costs and other reasonable charges may be appealed under procedures prescribed in the Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections.

C. Funds under the Comprehensive Services Act for At Risk Youth and Families:

1. Funds are available under the Comprehensive Services Act for At-Risk Youth and Families to support the state's share of costs for children with disabilities whose IEPs call for private day or private residential placement, or other purchased services, under the provisions of the Comprehensive Services Act.

2. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the LEA shall not be responsible for the cost of the placement. If a hearing officer or reviewing officer or court determines that such placement, rather than the IEP proposed by the LEA, is appropriate and no appeal is perfected from that decision, the LEA is responsible for placement and funds are available under the Comprehensive Services Act to support the state's share of costs.

D. Reimbursement for children with disabilities placed in foster care shall be made in accordance with procedures established by the SEA.

## §4.3 Federal Funds

A. Federal funds are available under Part B of Public Law 94-142, as amended, to assist local school divisions with the excess cost of providing special education and related services for children with disabilities ages two to 21, inclusive. The application for such funds is submitted to the SEA according to applicable federal requirements.

B. In order to qualify for Part B funds, an LEA must spend as much in state and local funds on elementary children with disabilities as on elementary nondisabled children; and as much on secondary children with disabilities as on secondary nondisabled children.

C. Part B funds may not be used to supplant state and local expenditures for special education and related services.

D. The entitlement of Part B funds for each LEA is based upon the unduplicated number of children with disabilities certified by the division superintendent as receiving special education and related services on December 1 of the prior year.

E. Children with disabilities transferred from State Operated Programs to LEAs may be served with funds applied for in accordance with the provisions of Public Law 89-313, as amended. However, no child included in the count for Public Law 94-142, as amended, is eligible to be counted for funding under Public Law 89-313, as amended.

## §4.4 Funds to Assist with the Education of Children with Disabilities Residing in State-Operated Facilities are available as follows:

A. Children in State Mental Health Facilities

State funds for special education and related services for children in state mental health facilities are appropriated to the Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Department of Education from the local school division's Basic Aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.

B. Children in State Training Centers for the Mentally Retarded

State funds for special education and related services for children in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Department of Education from the local school division's Basic Aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.

C. Children in Specialized Children's Hospitals

State funds are provided for special education and related services in the special education appropriation. Federal funds are available under the provisions of Public Law 89-313, as amended.

D. Children in Woodrow Wilson Rehabilitation Center

State funds for special education and related services are derived from the special education appropriation. Federal funds are available under the provisions of Public Law 89-313, as amended.

E. Children in Regional Juvenile Detention Homes

State funds for special education services are available from the special education appropriation.

F. State-Operated Diagnostic Clinics

State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the State Department of Health are derived from the special education appropriation.

G. Virginia Department of Correctional Education

State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state operated correctional facilities. Federal funds are available under the provisions of Public Law 94-142, as amended.

## §4.5 Funding, Withholding, and Recovery of Funds

A. The SEA shall disburse funds to LEAs for the education of children with disabilities (ages two to 21, inclusive) when they provide documentation of compliance with state and federal laws and regulations.

B. Where documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the LEA that state and federal funds will not be available for reimbursement for special education programs and services.

1. The notification shall include the substance of the alleged violation, and the LEA shall be given an opportunity to submit a written response; and

2. The LEA shall have the right to appeal to the Board of Education under Section 4.6 of this part.

C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under Section 4.6 of this part, finds that an LEA has failed to comply with the Board of Education regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that LEA until it complies with the Board of Education regulations.

D. Where there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the LEA, the foregoing due process procedures shall apply.

E. Where it is determined that such funds have been erroneously claimed, the SEA shall bill the LEA for the amount of funds improperly received or withhold an equal amount of state or federal funds for the following year.

## §4.6 Appeal of Administrative Decision

A. The SEA recommendation to disapprove an LEA Annual Special Education Plan/Report and Funding Applications or to withhold special education funds may be appealed by an LEA.

B. The procedures for the appeal of administrative decisions are as follows:

1. The LEA must request, in writing, a hearing by the SEA within 30 administrative working days from the receipt of notification from the Superintendent of Public Instruction.

2. Within 10 administrative working days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the LEA in writing of the date, time and location of the hearing;

3. The hearing shall transpire within 15 administrative working days from the date of notification;

4. The hearing board shall be composed of the following persons:

a. Two persons from the SEA who were not participants in the contested decision; these persons shall be appointed by the Superintendent of Public Instruction; and

b. Two members of the State Special Education Advisory Committee to be appointed by the chairman of the committee;

5. Witnesses and attorneys may be present and testify for the SEA or the LEA;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing board shall review all pertinent evidence presented and shall make a written recommendation to the Board of Education which will render a decision; and

8. The decision made by the Board of Education is final, unless a party appeals to a state court of competent jurisdiction or federal district court.

# PART V

## Additional Responsibilities of State Boards, Agencies, and Institutions for Education and Training of Children with Disabilities in Residence or Custody

### §5.1 Provision of Special Education to Children with Disabilities in Residence or Custody

Each State Board, Agency, and Institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Board of Education. The procedures outlined in Part III, Responsibilities of LEAs and State Agencies, of these regulations are applicable to each State Board, Agency and Institution having children with disabilities in residence and custody.

### §5.2 Annual Plan

Each State Board, Agency, and Institution having responsibility for providing such education and training shall submit annually to the SEA for approval by the Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Board of Education, shall include the provisions and assurances as specified in Section 3.6 of these regulations. In addition, the program plan shall include the following:

A. The educational objectives of the State Board, Agency, or Institution;

B. Strategies for achieving the educational objectives, including an organized program for staff development;

C. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objective(s);

D. A system of communication to assure service continuity in the transition of the student into and out of the educational program of the facility;

E. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;

F. A system of communication between the State Board, Agency, or Institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner in matters of concern to them;

G. A cooperatively developed procedure for the evaluation of educational personnel;

H. The grievance procedures regarding educational personnel as prescribed by the State or the appropriate local agency or board;

I. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the educational needs of children in residence is provided;

J. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week is available for each student to implement his IEP.

A waiver statement is on file for each student whose medical or physical condition requires modification of the school schedule. This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and there shall be on file statements of concurrence by the principal, supervisor or educational director and other personnel as follows:

1. Department of Mental Health, Mental Retardation and Substance Abuse Facilities - attending physician;
2. Department of Correctional Education - treatment team;
3. School for the Deaf and the Blind - physician, staffing committee and principal;
4. Woodrow Wilson Rehabilitation Center - Center counselor upon recommendation of the staffing committee;
5. State medical facilities - attending physician(s);
6. Juvenile detention homes - detention superintendent or designee;

K. Each state school for the deaf and the blind shall provide a planned dormitory and a student-life program for each age group of children, including social and daily living skills, recreation, and cultural activities.

## §5.3 Staff and Facility

A. Each State Board, Agency or Institution shall assign personnel to the educational program as follows:

1. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).
2. Additional education personnel to provide required related services as delineated in the IEP.
3. Teacher aides must be high school graduates or equivalent.

B. Each State Board, Agency or Institution shall staff the educational program as follows:

1. A principal, supervisor, education director or lead teacher for the educational program provided at each school or institution except for juvenile detention homes.
2. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:
   a. Serious emotional disturbance - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children;
   b. Hearing impairment/deafness - 1 teacher for every 7 children with 1 aide for every 3 classroom teachers;
   c. Mental retardation - 1 teacher and 1 aide for every 10 children;
   d. Severe and Profound Disability - 1 teacher and 1 aide for every 6 children or 1 teacher and 2 aides for every 10 children;

e. Visual impairment - 1 teacher for every 7 children with 1 aide for every 3 classroom teachers;

f. Other health impairment - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children;

g. Orthopedic impairment - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children;

h. Specific learning disability - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children;

i. Multiple disabilities or deaf-blindness - 1 teacher and 1 aide for every 6 students or 1 teacher and 2 aides for every 10 students;

j. Autism - 1 teacher for every 6 students or 1 teacher and 1 aide for every 8 students;

k. Department of Correctional Education - no greater than an average of 1 teacher and 1 aide for every 10 children;

l. Woodrow Wilson Rehabilitation Center - no greater than an average of 1 teacher for every 10 children;

m. Juvenile detention homes - A student/teacher ratio shall be based on the bed capacity of the detention home: 1 teacher per 12 beds. Where unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

C. Each facility shall have available adequate and appropriate classroom space, library, and instructional materials and supplies to meet the educational needs of the children.

# PART VI

## Compliance with §504 of the Rehabilitation Act of 1973, As Amended

**§6.1 For those public elementary or secondary education programs operated by the Virginia Department of Education, the Department shall:**

A. Develop an individualized education program for each person who is handicapped as defined by the Rehabilitation Act of 1973 and its amendments; and

B. Utilize the system of procedural safeguards specified in these Regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments.

**§6.2 Local education agencies, as defined by these Regulations, other than the Virginia Department of Education, may utilize the due process hearing system specified in these Regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments.**

# INDEX


## A

Accommodations 26
Administrative Working Days 4
Age Appropriate Peers 21
Annual Plan, Local 13, 42
Appeal
  Hearing Officer Decision 36, 37
  Reviewing Officer Decision 36
Appointment
  Impartial Hearing Officer 5, 33
  Reviewing Officer 36
  Surrogate Parent 40
Assistive Technology 2, 30
Attorneys Fees 36
Autism 3

## B

Board of Education 1, 2, 39

## C

Change in Placement 3, 32
Change in Program 32
Child Count 14, 46
Child Find 15
Child Study Committee 16
Complaint Procedures 38
Compliance with State and Federal Law and Regulations 13, 38
Comprehensive Services Act 46
Comprehensive System of Personnel Development 14, 43
Confidentiality 38
Consent 3, 20, 21, 32
Continuum of Alternative Placements 21
Correctional Education 47

## D

Dangerous Students 29
Deafness 4
Deaf Blindness 4
Detention Home Students 47, 51, 52
Developmental Delay 4
Discipline 29
Due Process Hearings 32, 38

## E

Educational Interpreting 30
Eligibility 2, 18, 19
Eligibility Committee 19
Emotional Disturbance, see Serious Emotional Disturbance
Endorsement, see Teacher Licensure
Evaluation 4, 17, 22
  Independent Educational Evaluation 5, 31
  Initial Evaluation 17, 32
  Reevaluation 8, 23, 32
  Triennial Evaluation 23, 32
Expulsion 29, 32
Extracurricular Services and Activities 7, 22, 23

## F

Family Life Education 27
Free Appropriate Public Education 4, 21
Funding 4, 45-48

## G

Graduation 32

## H

Hearing, Due Process 32-38
Hearing Impairment 5
Homebound Instruction 28, 45

## I

Impartial Hearing Officer 5, 33, 34
Implementation Plan 5, 37
Independent Educational Evaluation (IEE) 5, 31
Individualized Education Program (IEP) 5, 24
  Committee Composition 24, 27
  Notice 25
  Parental Participation 25
  Required Components 5, 26
  Revision 24
Interpreting Personnel 6, 30
Interpreting Services 30

## L

Learning Disability, see Specific Learning Disability
Least Restrictive Environment 6, 22, 27
Literacy Passport Testing 26
Local Advisory Committee 43
Local Plan 13, 42

## M

Mediation 33
Mental Retardation 6
Multiple Disabilities 6

## N

Native Language 6, 31
Nonacademic Services 7, 22, 23
Notice 7, 8, 25, 31

## O

Occupational Therapy 7
Orthopedic Impairment 7
Other Health Impairment 7

## P

Participating Agency 7, 25, 27
Parent, defined 7
Parent Participation 25
Pendency Provision 20, 32
Personnel Development 14, 43
Physical Education 7, 23
Physical Therapy 8
Placement 27, 32
Prehearing Conference 34
Private School 27
Procedural Safeguards 30

## Q

Qualified, defined 8

## R

Records, Student 30, 38
Reevaluation 8, 23, 32
Referral 16, 17
Regional Programs 44, 45
Related Services 9, 26

## S

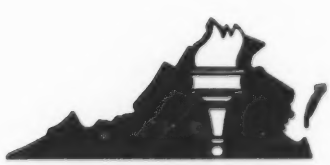
Screening 9, 16
Section 504 of the Rehabilitation Act of 1973 9, 53
Serious Emotional Disturbance 9
Severe and Profound Disability 9
Speech/Language Impairment 11
Specific Learning Disability
Definition 10
Eligibility 18, 20
Evaluation Requirements 18
State Operated Programs 45, 47
State Plan 13
State Special Education Advisory Committee 13
Student Records 30, 38
Subpoena 34
Surrogate Parent 11, 39-42
Suspension
Short Term 29
Long Term 29

## T

Teacher Licensure 43
Termination of Services 20, 32
Testing 4, 17
Timelines 16, 17, 18, 24, 33, 36, 37, 38, 39
Transcripts 34
Transfer Students 21
Transition Services 6, 11, 25, 26, 27
Transportation 12, 23, 45
Traumatic Brain Injury 12
Triennial Evaluation 23, 32

## V

Virginia Schools for the Deaf and the Blind 51
Visual Impairment 12



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